

1 ROBERT A. DOLINKO (State Bar No. 076256)
radolinko@thelen.com
2 DEBORAH R. SCHWARTZ (State Bar No. 208934)
drschwartz@thelen.com
3 THELEN REID BROWN RAYSMAN & STEINER LLP
101 Second Street; Suite 1800
4 San Francisco, CA 94105
Telephone: (415) 371-1200
5 Facsimile: (415) 371-1211

6 Attorneys for Defendants
WHITE CAP CONSTRUCTION SUPPLY, INC.
7 And HD SUPPLY INC.

E-filing

8

9

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WEB

11

12 ALEX ROJAS,

No.: 08

3886

13 Plaintiff,

14 v.

15 WHITE CAP CONSTRUCTION SUPPLY,
16 INC. and HD SUPPLY INC.

NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. §§ 1332 and 1441(b)
(DIVERSITY)

Complaint Filed: July 7, 2008
Trial Date: None

17 Defendants.

18

19 TO THE CLERK OF THE ABOVE ENTITLED COURT:

20 PLEASE TAKE NOTICE that Defendants White Cap Construction Supply, Inc. ("White
21 Cap") and HD Supply Inc. ("HD Supply") (jointly "Defendants") hereby remove to this Court the
22 state court action described below.

23 1. On or about July 7, 2008, an action was commenced in the Superior Court of the
24 State of California for the County of San Francisco entitled *Alex Rojas, Plaintiff v. White Cap*
25 *Construction Supply, Inc. and HD Supply Inc., et al., Defendants*, and assigned Case No. CGC-
26 08-477141 ("State Court action"). Copies of the Summons to each defendant, the Civil Cover
27 Sheet, the Complaint and the Notice to Plaintiff of Case Management Conference are attached
28 hereto as Exhibit A. This represents all process, pleadings and orders served upon Defendants.

1 Attached hereto as Exhibit B is a true and correct copy of the Answer Defendants filed in the
2 Superior Court.

3 2. Defendants have not filed, served or received any papers or pleadings in the State
4 Court Action other than those attached to this Notice as Exhibits A and B.

5 3. This lawsuit first became removable on July 15, 2008, pursuant to 28 U.S.C.
6 §1446(b). The lawsuit was first served upon and received by Defendants on that date.

7 4. At the time of the filing of the State Court action and at the time of removal,
8 Defendant White Cap Construction Supply, Inc. ("White Cap") was and is a Delaware
9 Corporation with its principal place of business in the State of Georgia. HD Supply Inc. was and
10 is a Delaware corporation with its principal place of business in the State of Georgia. Neither
11 defendant was nor is a citizen of the State of California.

12 5. White Cap does not employ any individuals in the State of California and derives
13 virtually no revenue from the State of California. Its corporate headquarters are in Atlanta,
14 Georgia. Hence, White Cap's principal place of business is the state of Georgia – and not the
15 State of California.

16 6. HD Supply is a corporation that does business in all 50 states. Less than 15% of its
17 revenue (including that of HD Supply and its subsidiaries) was generated in California during the
18 first half of 2007.¹ Fewer than 25 percent of HD Supply's active, full-time employees work in the
19 State of California. The great majority (88%) of HD Supply's locations or facilities (*i.e.*, tangible
20 property) are located outside the State of California. There is no single state where a majority of
21 HD Supply's business activities take place. Those business activities are instead spread among all
22 50 states. The great majority of HD Supply's activities take place outside the State of California.
23 The corporate headquarters for HD Supply, where much of the overall corporate strategy is
24 developed, is in the State of Georgia. Hence, HD Supply's principal place of business is the state
25 of Georgia – and not the State of California.

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¹ Revenue data for the second-half of 2007 is not presently available to HD Supply.

1 7. Plaintiff Alex Rojas is, and at all material times was, a citizen of the State of
2 California.

3 8. Plaintiff's claims for violation of the Fair Employment & Housing Act ("FEHA")
4 reveal that the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.
5 If Plaintiff prevails at trial, it is most likely that his damages will exceed the jurisdictional limit
6 identified in 28 U.S.C. § 1332(a), exclusive of interest and costs. At the time of his termination of
7 employment in 2007, Plaintiff was paid a salary of more than \$52,000 per year. He claims
8 damages for wrongful termination, for humiliation, mental anguish and emotional and physical
9 distress, and punitive damages.

10 9. In accordance with 28 U.S.C. § 1446(d), plaintiff, through his counsel of record,
11 and the Clerk of the Superior Court, shall be timely served with copies of this Notice of Removal.

12 WHEREFORE, Defendants White Cap Construction Supply, Inc. and HD Supply Inc. pray
13 that this action stand and remain removed from the Superior Court of the State of California for
14 the County of San Francisco to this Court.

15

16 Dated: August 14, 2008

THELEN REID BROWN RAYSMAN & STEINER LLP

17

18

By:

Robert A. Dolinko

Robert A. Dolinko
Deborah R. Schwartz
Attorneys for Defendants
WHITE CAP CONSTRUCTION SUPPLY, INC.
and HD SUPPLY INC.

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1 *Rojas v. White Cap Construction and HD Supply, et al.*
2 Case No.

3
4 **PROOF OF SERVICE BY MAIL**
5

6 I am over the age of 18 and not a party to the within action. I am employed in the County
7 of San Francisco, State of California by Thelen Reid Brown Raysman & Steiner LLP. My
8 business address is 101 Second Street, Suite 1800, San Francisco, California 94105.
9

10 On August 14, 2008, I served the following entitled document:
11

12
13 **NOTICE OF REMOVAL OF ACTION UNDER**
14 **28 U.S.C. §§ 1332 and 1441(b) (DIVERSITY)**

15 by placing a true and correct copy thereof in a sealed envelope addressed as follows:
16

17 Michael Hoffmann, Esq
18 Hoffmann Employment Lawyers, LLP
19 100 Pine Street, Suite 1550
20 San Francisco, CA 94111

21 I am readily familiar with the firm's business practice for collection and processing of
22 correspondence for mailing with the United States Postal Service. On this day, I placed for
23 collection and processing the above documents to be deposited with the United States Postal
24 Service in the ordinary course of business. And in the ordinary course of the firm's business, such
25 correspondence is deposited with the United States Postal Service the same day that it is collected.

26 I declare under penalty of perjury under the laws of the State of California that the
27 foregoing is true and correct.

28 Executed on August 14, 2008, at San Francisco, California.

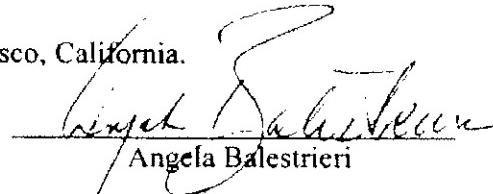

Angela Balestrieri

Exhibit A

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**
WHITE CAP CONSTRUCTION SUPPLY, INC., HD SUPPLY INC.,
and DOES 1-50, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
ALEX ROJAS

SUM-100
FOR COURT USE ONLY
(SOLO PARA USO DE LA CORT)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/seithelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/seithelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/seithelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/seithelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Civic Center Courthouse
400 McAllister Street
San Francisco, CA 94102

CASE NUMBER:
Número del Caso: CCC-07-161-973

CBC-88-477141

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

MICHAEL HOFFMAN SBN 154481
100 Pine Street, Suite 1550, San Francisco, CA Gordon Park-Li

DATE: JUL - 7 2008
(Fecha)

Clerk, by _____
(Secretario) *Elias Butt*, Deputy
Elias Butt (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons. (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):

- on behalf of (specify): HD SUPPLY INC.

under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):

- by personal delivery on (date):



SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
WHITE CAP CONSTRUCTION SUPPLY, INC., HD SUPPLY INC.,
and DOES 1-50, inclusive

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
ALEX ROJAS

SUM-100
FOR COURT USE ONLY
(SOLO PARA USO DE LA CORT)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/seithelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/seithelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto al desear que procesen su caso en la corte. Es posible que haya un formulario que usted puede usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/seithelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podría quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumple con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/seithelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
 (El nombre y dirección de la corte es):

Civic Center Courthouse
 400 McAllister Street
 San Francisco, CA 94102

CASE NUMBER:
 número del Caso

CCC-07-461-973

600-38-477141

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
 (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

MICHAEL HOFFMAN SBN 154481
 100 Pine Street, Suite 1550, San Francisco, CA Gordon Park-Li

DATE: JUL - 7 2008

Clerk, by _____
 (Secretario) *Elias Bui*, Deputy
Elias Bui (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
 (Para prueba de entrega de este citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify): WHITE CAP CONSTRUCTION SUPPLY, INC.

under: CCP 418.10 (corporation) CCP 418.60 (minor)
 CCP 418.20 (defunct corporation) CCP 418.70 (conservatee)
 CCP 418.40 (association or partnership) CCP 418.90 (authorized person)
 other (specify):

4. by personal delivery on (date):



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, Bar number, and address)

MICHAEL HOFFMAN SBN 15448

BARBARA FIGARI SBN 251942

100 Pine Street, Ste. 1550

San Francisco, CA 94111

TELEPHONE NO. (415) 362-1111

FAX NO. (415) 362-1112

ATTORNEY FOR PLAINTIFF ALEX ROJAS

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO

STREET ADDRESS: 400 McAllister Street

MAILING ADDRESS:

CITY AND ZIP CODE: San Francisco, CA 94102

BRANCH NAME: Civic Center Courthouse

CASE NAME:

Rojas v. White Cap

| | | | |
|---|---|---|------------------------|
| CIVIL CASE COVER SHEET | | Complex Case Designation | CASE NUMBER |
| <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) | <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) | <input type="checkbox"/> Counter <input type="checkbox"/> Joiner Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) | 600-07-461-973 |
| | | | JUDGE 080-38-477141 |

Items 1-8 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

| | | |
|---|---|--|
| Auto Tort | Contract | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) |
| <input type="checkbox"/> Auto (22) | <input type="checkbox"/> Breach of contract/charterparty (06) | <input type="checkbox"/> Antitrust/Trade regulation (03) |
| <input type="checkbox"/> Uninsured motorists (48) | <input type="checkbox"/> Rule 3.740 collections (09) | <input type="checkbox"/> Construction defect (10) |
| Other PI/PD/AWD (Personal Injury/Property Damage/Wrongful Death) Tort | <input type="checkbox"/> Other collections (09) | <input type="checkbox"/> Mass tort (40) |
| <input type="checkbox"/> Asbestos (04) | <input type="checkbox"/> Insurance coverage (18) | <input type="checkbox"/> Securities litigation (28) |
| <input type="checkbox"/> Product liability (24) | <input type="checkbox"/> Other contract (37) | <input type="checkbox"/> Environmental/Toxic tort (30) |
| <input type="checkbox"/> Medical malpractice (45) | <input type="checkbox"/> En Banc domain/inverse condemnation (14) | <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) |
| <input type="checkbox"/> Other PI/PD/AWD (23) | <input type="checkbox"/> Wrongful eviction (33) | |
| Non-PI/PD/AWD (Other) Tort | <input type="checkbox"/> Other real property (26) | Enforcement of Judgment |
| <input type="checkbox"/> Business tort/unfair business practice (07) | <input type="checkbox"/> Unjustifiable Detainer | <input type="checkbox"/> Enforcement of Judgment (20) |
| <input type="checkbox"/> Civil rights (08) | <input type="checkbox"/> Commercial (31) | Miscellaneous Civil Complaint |
| <input type="checkbox"/> Defamation (13) | <input type="checkbox"/> Residential (32) | <input type="checkbox"/> RICO (27) |
| <input type="checkbox"/> Fraud (16) | <input type="checkbox"/> Drugs (34) | <input type="checkbox"/> Other complaint (not specified above) (42) |
| <input type="checkbox"/> Intellectual property (19) | Judicial Review | Miscellaneous Civil Petition |
| <input type="checkbox"/> Professional negligence (25) | <input type="checkbox"/> Asset forfeiture (05) | <input type="checkbox"/> Partnership and corporate governance (21) |
| <input type="checkbox"/> Other non-PI/PD/AWD tort (35) | <input type="checkbox"/> Petition re: arbitration award (11) | <input type="checkbox"/> Other petition (not specified above) (43) |
| Employment | <input type="checkbox"/> Writ of mandate (02) | |
| <input checked="" type="checkbox"/> Wrongful termination (36) | <input type="checkbox"/> Other judicial review (39) | |
| <input type="checkbox"/> Other employment (15) | | |

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. Large number of separately represented parties d. Large number of witnesses
 b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 c. Substantial amount of documentary evidence f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify):

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 27, 2008

R.Michael Hoffman, Esq.

(TYPE OR PRINT NAME)

NOTICE

(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

SUMMONS ISSUED

FILED
San Francisco County Superior Court

JUL - 7 2008

GORDON PARK-LI, Clerk
[Signature]
Deputy Clerk

1 HOFFMAN EMPLOYMENT LAWYERS, LLP
MICHAEL HOFFMAN 154481
100 Pine Street Ste. 1550
2 San Francisco, CA 94111 CASE MANAGEMENT CONFERENCE SET
3 Tel (415) 362-1111
Fax (415) 362-1112
Email: mhoffman@employment-lawyers.com
4 DEC - 5 2008 - 9 AM
5 Attorney for Plaintiff

DEPARTMENT 212
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO - UNLIMITED JURISDICTION

ALEX ROJAS,

Plaintiff,

vs.

WHITE CAP CONSTRUCTION SUPPLY,
INC., HD SUPPLY INC., and DOES 1-50,
inclusive,

Defendants.

CASE NO C80-08-477141

PLAINTIFF'S COMPLAINT FOR
DAMAGES

JURY TRIAL DEMAND

1. Plaintiff, ALEX ROJAS an individual ("Plaintiff") is, and at all times relevant
hereto has been a resident of the State of California, County of San Francisco. Plaintiff was
employed for a period of approximately twenty-two (22) years, from October 3, 1985 until
December 10, 2007 by Viking Distributing, which was bought out by Defendant WHITE CAP
CONSTRUCTION SUPPLY, INC. ("White Cap"), and was finally bought out by Defendant HD
SUPPLY, a Home Depot company.

2. Plaintiff is informed and believes and thereby alleges that defendant White Cap is
a Delaware Corporation, and that Defendant White Cap is, and at all times relevant hereto, was a
corporation qualified to do business in California, with its principal place of business located in
the County of San Francisco, State of California.

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22 Battery Street, Ste. 1000
San Francisco, CA 94111
(415) 362-1111

1 3. Plaintiff is informed and believes and thereby alleges that defendant HD Supply is
2 a Delaware Corporation, and that Defendant HD Supply is, and at all times relevant hereto, was a
3 corporation qualified to do business in California, with its principal place of business located in
4 the city of Palm Beach Gardens, State of Florida. The employment contract upon which Plaintiff
5 sues herein was made in the State of California to be performed in the County of San Francisco.

7 4. DOE Defendants 1 through 20 are sued herein under fictitious names pursuant to
8 California Code of Civil Procedure Section 474. Plaintiff is informed and believes, and on that
9 basis alleges that each defendant sued under such fictitious names is in some manner responsible
10 for the wrongs and damages as alleged below, and in so acting was functioning as the agent,
11 servant, partner, and employee of the co-defendants and in doing the things hereinafter
12 mentioned was acting within the course and scope of his or her authority as such agent, servant,
13 partner, and employee with the permission and consent of the co-defendants.
14

FIRST CAUSE OF ACTION

(Breach of Contract)

(Against Defendants White Cap, HD Supply, and all Does)

18 5. The allegations of paragraph 1 through 5 are alleged and incorporated herein by
19 reference. This cause of action is pled against Defendant entities White Cap and HD Supply.

20 6. Plaintiff was last employed as an Assistant Traffic Supervisor.

21 7. During the entire course of Plaintiff's employment with Defendants, there existed
22 an express and implied in fact employment contract between Plaintiff and Defendant which at
23 the time of Plaintiff's discharge included, but was not limited to, the following terms and
24 conditions:

A. Plaintiff would be able to continue his employment with Defendant indefinitely so long as he carried out his duties in a proper and competent manner;

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San Francisco, CA 94111
(415) 362-1111

1 B. Plaintiff would not be demoted, discharged or otherwise disciplined nor would
2 Plaintiff's job functions be reassigned for other than good cause with notice thereof;

3 C. That Defendant would not evaluate Plaintiff's performance in an arbitrary, untrue
4 or capricious manner;

5 8. This total employment contract was evidenced by various written documents, oral
6 representations to Plaintiff by Defendants' agents and employees, and the parties' entire course of
7 conduct including the following:

8 A. Plaintiff is informed and believes and thereon alleges that portions of this contract
9 are embodied in defendants' written personnel policies and discipline procedures;

10 D. There was an established policy within Defendants' company known to Plaintiff
11 and relied upon by Plaintiff, that an employee such as Plaintiff, who had performed services as a
12 good and faithful employee, would have secure employment tenure with Defendants; that an
13 employee such as Plaintiff would be permitted to continue employment unless discharged for
14 good and sufficient cause; that an employee such as Plaintiff would not have his duties
15 surreptitiously divided among junior, less experienced employees; that an employee such as
16 Plaintiff would not be demoted, discharged or disciplined without good and sufficient cause, and
17 would not otherwise have his job functions taken away or reassigned.

18 C. Again and again during his employment, Plaintiff was told by his superiors, orally
19 and in writing, that he was doing an excellent job and that he would always have a job with
20 Defendants. Plaintiff was given numerous awards and plaques consistently during Plaintiff's
21 employment. As a result of the above representations, during the following 22 years of loyal
22 employment, and promotions and salary increases, Plaintiff came reasonably to expect and to
23 rely on the promise of job security. Such statements and acts by Defendants communicated to
24 Plaintiff were reasonable to Plaintiff under the circumstances.

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22 Battery Street, Ste. 1000
San Francisco, CA 94111
(415) 362-1111

1 Plaintiff the idea that he had performed satisfactorily and that his job was secure. Plaintiff in
2 good faith relied upon these representations and believed them to be true.

3 9. Plaintiff's reliance on and belief in and acceptance in good faith of all the
4 assurances, promises and representations, as listed in paragraph 9 above, led Plaintiff throughout
5 his employment with Defendants to reasonably believe that his employment was secure and that
6 there thereby existed a contract of continuous employment with Defendants. As independent
7 consideration for this contract of continuing employment, and as evidence of Plaintiff's reliance
8 thereon, at the time he began working for defendant, Plaintiff gave up the possibility of other
9 secure employment in order to accept employment with Defendant. As further independent
10 consideration, in addition to performing his regular duties as an employee of Defendants,
11 Plaintiff restrained from seeking any other employment and from time to time turned down, gave
12 up, and restrained from pursuing other career opportunities.

13 10. Plaintiff undertook and continued employment and duly performed all the
14 conditions of the contract to be performed by him. Plaintiff has at all times been ready, willing
15 and able to perform and has offered to perform all the conditions of this contract to be performed
16 by him.

17 11. Despite the representations made to Plaintiff and the reliance he placed on them,
18 Defendants failed to carry out their responsibilities under the terms of the employment contract
19 in the following way:

20 A. In the Summer of 2006, Plaintiff was subjected to arbitrary, unfair and dishonest
21 business practices in the form of concealing the fact that Defendants were surreptitiously
22 dividing up Plaintiff's work duty among junior, less experienced employees;

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San Francisco, CA 94111
(415) 362-1111

1 B. During termination, by telling Plaintiff that his job performance was "excellent"
2 and he was being terminated because of the alleged elimination of his position.

3 C. By wrongfully terminating Plaintiff on or about December 10, 2007, in spite of
4 exemplary job performance;

5 12. Defendants breached the aforementioned total employment contract by the
6 arbitrary or discriminatory discharge of Plaintiff without regard to or in compliance with the
7 requirements of the aforesaid agreement.

8 13. As a proximate result of Defendants' breach of the total employment contract,
9 Plaintiff has suffered and continues to suffer substantial losses in earnings, bonuses, deferred
10 compensation and other employment benefits which he would have received had Defendants not
11 breached said agreement, all to his damage in an amount according to proof.

12 14. The aforesaid employment contract contained an implied covenant of good faith
13 and fair dealing by which Defendants promised to give full cooperation to Plaintiff and his
14 performance under said employment contract and to refrain from doing any act which would
15 prevent or impede Plaintiff from performing all the conditions of the contract to be performed by
16 him or any act that would prevent or impede Plaintiff's enjoyment of the fruits of said contract.
17 Specifically, said covenant of good faith and fair dealing required Defendants to fairly, honestly
18 and reasonably perform the terms and conditions of the agreement.

19 15. Plaintiff, an individual employee, with no legal representation or prior experience
20 in making such contracts as the one alleged herein, was in an inherently unequal bargaining
21 position in his dealings with Defendants, an established concern with billions of dollars in assets.
22 In addition, once Plaintiff committed himself to the above-stated contract, and took the
23 reasonable actions alleged herein in reliance, Plaintiff was placed in a particularly vulnerable
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position because few openings exist in his field for persons of his age, experience and qualifications. He had entrusted his entire livelihood to Defendants' willingness to perform its obligations under the contract, and risked suffering grave harm if Defendants failed to perform. Defendant was aware of Plaintiff's vulnerability in this regard.

16. As a result of Defendants' violations of contract, and their reprehensible and willful conduct toward Plaintiff, Plaintiff has suffered harm:

A. The destruction of Plaintiff's valuable property interests, i.e., his prospect of continuing further employment with Defendants and receipt of continued compensation;

B. Impairment and damage to Plaintiff's good name by causing him to be discharged with the untrue implication to all future prospective employers that he had been disciplined or discharged for incompetence or unsatisfactory performance. Said implication was and is completely untrue and totally without foundation;

C. Substantial losses in earnings, bonuses, deferred compensation, and other employment benefits and costs incurred.

17. The primary motivation of Plaintiff in obtaining secure employment with White Cap was because he believed he could grow and develop his career as a White Cap employee, as well as Plaintiff's admiration of White Cap and excitement over employment with said company.

18. Defendants committed the acts alleged herein maliciously, fraudulently and oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive amounting to malice, and in conscious disregard of Plaintiff's rights. Plaintiff thus is entitled to recover punitive damages from Defendants in an amount according to proof.

WHEREFORE, Plaintiff requests relief as hereinafter provided.

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(415) 362-1111

SECOND CAUSE OF ACTION

(Age Discrimination, Cal Govt. Code § 12940, et seq.) (Against Defendants White Cap)

19. Plaintiff incorporates by reference the allegations of paragraphs 1 through 18
above as though set forth verbatim here.

20. At the time of termination, Plaintiff was 66 years of age.

21. On December 10, 2007 Plaintiff was terminated by Defendant from his position.
Plaintiff had been Defendant's loyal employee for approximately 22 years prior to his
termination.

22. Plaintiff's discharge was based on his age.

A. Plaintiff was terminated for pretextual reasons;

B. Before terminating Plaintiff, Defendants purposely concealed the fact that
Defendants were surreptitiously dividing up Plaintiff's job among younger, less experienced
junior employees;

C. During termination, Plaintiff was told that his job performance was "excellent"
and he was being terminated because his position was being eliminated. This was untrue.

D. Plaintiff is informed and believes and thereon alleges that Defendants have hired
younger employees to take Plaintiff's position after Plaintiff was told that the termination was
due to elimination of Plaintiff's position;

E. Disparate treatment was given to Plaintiff due to Plaintiff's age;

F. There was a contract between the parties hereto, known and relied upon by
Plaintiff, that an employee such as Plaintiff, who had performed services as a good and faithful
employee, particularly for a period of 22 years, would have secure employment tenure with
Defendants; would be permitted to continue employment unless discharged for good and
sufficient cause; that an employee such as Plaintiff, would not be discharged, have his hours cut

or have his duties surreptitiously or otherwise divided up among younger, junior employees, without good and sufficient cause; and would not otherwise have his job functions taken away or reassigned, that Defendants would not negligently or intentionally create an environment of disparate treatment.

23. Plaintiff filed a timely charge of age discrimination with the California DFEH, effectively tolling the statute of limitations on Plaintiff's claim herein. Plaintiff is not required to exhaust any other administrative remedies before filing this suit.

24. As a proximate and direct result of Defendants' discrimination against Plaintiff, Plaintiff has suffered and continues to suffer substantial losses incurred in seeking and performing substitute employment, and in earnings, bonuses, deferred compensation and other employment benefits, and has suffered and continues to suffer embarrassment, humiliation, mental anguish and emotional and physical distress all to his damage in an amount according to proof.

25. Defendants committed the acts alleged herein maliciously, fraudulently and oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive amounting to malice, and conscious disregard of Plaintiff's rights. Plaintiff is thus entitled to recover punitive damages from Defendants in an amount according to proof, and is further entitled to liquidated damages in an equal amount to his unpaid wages.

THIRD CAUSE OF ACTION
(Wrongful Termination in Violation of Public Policy)

1. Under California law, no employee, whether they are an at will employee, or an employee under a written or other employment contract, can be terminated for a reason that is in violation of a fundamental public policy. In recent years, the California court has interpreted a fundamental public policy to be any articulable constitutional or statutory provision that is

1 concerned with a matter effecting society at large rather than a purely personal or proprietary
2 interest of the employee or the employer, and which is fundamental, substantial, and well
3 established at the time of discharge.

4 2. Plaintiff is informed, believes, and based thereon alleges, that Defendant White Cap
5 and HD Supply Co. terminated Plaintiff's employment in violation of public policy, on the basis
6 of Plaintiff's age. The conduct described in the above sentence violates the following statutes
7 that effect society at large:

8 a. California Government Code
9 b. All other state and federal statutes, regulations, administrative orders, and ordinances
10 which effect society at large, and which discovery will reveal were violated by said Defendant by
11 discriminating and retaliating against the Plaintiff.

12 3. Plaintiff alleges that Defendants violated articulable public policies, affecting society
13 at large, by violating the statutes and the California Constitution, as described above, when said
14 Defendant constructively terminated Plaintiff's employment in violation of public policy.

15 4. As a direct, foreseeable, and proximate result of the actions of Defendants as
16 described above, Plaintiff has suffered, and continues to suffer, severe emotional distress,
17 substantial losses in salary, bonuses, job benefits, and other employment benefits they would
18 have received from said Defendants, all to the Plaintiff's damage, in a sum within the jurisdiction
19 of this court, to be ascertained according to proof.

20 PRAAYER FOR RELIEF

21 1. For damages for breach of contract according to proof including losses incurred in
22 seeking substitute employment and loss of earnings, deferred compensation and other
23 employment benefits;

25 2. For compensatory damages for losses resulting from humiliation, mental anguish,
26 and emotional distress according to proof;

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3. For interest on the amount of losses incurred in earnings, deferred compensation and other employee benefits at the prevailing legal rate;
4. For punitive damages according to proof;
5. For costs of suit including reasonable attorneys' fees pursuant to statute;

MICHAEL HOFFMAN, ESQ.

Dated:

**Michael HOFFMAN,
ATTORNEY FOR PLAINTIFF**

LAW OFFICES OF MICHAEL HOFFMAN
22 Battery Street, Ste. 1000
San Francisco, CA 94111
(415) 362-1111

CASE NUMBER: CGC-08-477141 ALEX ROJAS VS. WHITE CAP CONSTRUCTON SUPPLY, INC

NOTICE TO PLAINTIFF

A Case Management Conference is set for:

DATE: DEC-05-2008

TIME: 9:00AM

PLACE: Department 212
400 McAllister Street
San Francisco, CA 94102-3680

All parties must appear and comply with Local Rule 3.

CRC 3 725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order without an appearance at the case management conference if the case management statement is filed, served and lodged in Department 212 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A MANDATORY SETTLEMENT CONFERENCE OR TRIAL. (SEE LOCAL RULE 4)

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3876

See Local Rules 3.6, 8.0 C and 10 D re stipulation to commissioners acting as temporary judges

Exhibit B

1 ROBERT A. DOLINKO (State Bar No. 076256)
radolinko@thelen.com
2 DEBORAH R. SCHWARTZ (State Bar No. 208934)
drschwartz@thelen.com
3 THELEN REID BROWN RAYSMAN & STEINER LLP
101 Second Street, Suite 1800
4 San Francisco, California 94105-3601
5 Telephone: (415) 371-1200
Facsimile: (415) 371-1211

6 Attorneys for Defendants
7 WHITE CAP CONSTRUCTION SUPPLY, INC.
and HD SUPPLY INC.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

12 ALEX ROJAS,

Case No.: CGC-08-477141

13 Plaintiff,

14 vs.

15 WHITE CAP CONSTRUCTION SUPPLY,
16 INC. and HD SUPPLY INC., and DOES 1-
50, inclusive,

ANSWER OF DEFENDANTS WHITE
CAP CONSTRUCTION SUPPLY, INC.
AND HD SUPPLY INC. TO PLAINTIFF'S
COMPLAINT FOR DAMAGES

17 Defendants.

19 Defendants White Cap Construction Supply, Inc. and HD Supply Inc. (jointly
20 "Defendants"), in answer to the Complaint ("Complaint") of plaintiff Alex Rojas ("Plaintiff"),
21 admit, deny and allege as follows:

22 1. Pursuant to the provisions of Section 431.30(d) of the California Code of Civil
23 Procedure. Defendants deny generally and specifically each and every allegation contained in
24 Plaintiff's Complaint, and further deny that Plaintiff has sustained damages in the sum or sums
25 alleged, or in any other sum at all, by reason of any act, breach or omission by Defendants.

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AFFIRMATIVE DEFENSES

As separate affirmative defenses to each and every cause of action alleged in the Complaint, unless specifically stated otherwise, Defendants allege as follows:

FIRST AFFIRMATIVE DEFENSE

2. Plaintiff's Complaint, and each and every cause of action alleged therein, fails to state facts sufficient to constitute a cause of action against Defendants.

SECOND AFFIRMATIVE DEFENSE

8 3. Defendants allege, based on information and belief, that the court lacks jurisdiction
9 over the subject matter of each of Plaintiff's claims for relief because the exclusive remedy for his
10 purported emotional and physical injuries lies under the California Workers' Compensation Act,
11 Cal. Lab. Code § 3600, *et seq.*

THIRD AFFIRMATIVE DEFENSE

13 4. Defendants allege, based on information and belief, that Plaintiff's Complaint falls
14 outside the jurisdiction of this court in that Plaintiff has failed to satisfy the jurisdictional
15 prerequisites to bringing this lawsuit by exhausting his available administrative remedies as
16 required by law.

FOURTH AFFIRMATIVE DEFENSE

18 5. The Court lacks subject matter jurisdiction over the claims and allegations in the
19 Complaint that concern matters not reasonably related to charges filed by Plaintiff in a timely
20 manner with the appropriate government agency.

FIFTH AFFIRMATIVE DEFENSE

22 6. Although Defendants deny that they engaged in the conduct attributed to them,
23 Defendants allege, based on information and belief, that Plaintiff's damage claims are barred, in
24 whole or part, by the avoidable consequences doctrine.

SIXTH AFFIRMATIVE DEFENSE

26 7. Defendants allege, based on information and belief, that Plaintiff's Complaint, and
27 each and every cause of action alleged therein, is barred by the doctrine of waiver.

SEVENTH AFFIRMATIVE DEFENSE

8. Defendants allege, based on information and belief, that Plaintiff's Complaint, and each and every cause of action alleged therein, is barred by the doctrine of estoppel.

EIGHTH AFFIRMATIVE DEFENSE

9. Defendants allege, based on information and belief, that Plaintiff's Complaint, and each and every cause of action alleged therein, is barred by the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE

8 10. Although Defendants deny that Plaintiff has been damaged in any way, if it should
9 be determined that Plaintiff has been damaged, then Defendants allege, based on information and
10 belief, that Plaintiff has failed to mitigate his purported damages, and further alleges that, to the
11 extent any damages could have been mitigated, such sums should be deducted from any award of
12 damages.

TENTH AFFIRMATIVE DEFENSE

11. Defendants allege, based on information and belief, that to the extent Plaintiff seeks unspecified punitive damages, such claim and damages are contrary to the due process clauses and other clauses of the United States and California Constitutions.

WHEREFORE, White Cap Construction Supply, Inc. and HD Supply Inc. pray for judgment against Plaintiff as follows:

1. That Plaintiff's Complaint be dismissed in its entirety and with prejudice, and that Plaintiff take nothing by reason hereof;

2. That White Cap Construction Supply, Inc. and HD Supply Inc. each be awarded its costs of suit incurred herein;

3. That White Cap Construction Supply, Inc. and HD Supply Inc. each be awarded its attorneys' fees to the extent provided by law;

4. That judgment be entered in favor of White Cap Construction Supply, Inc. and HD Supply Inc.; and

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5. That White Cap Construction Supply, Inc. and HD Supply Inc. receive such other relief as the Court deems just and proper.

Dated: August 13, 2008

THELEN REID BROWN RAYSMAN & STEINER LLP

By Robert A. Dolinko
Robert A. Dolinko
Deborah R. Schwartz
Attorneys for Defendants
WHITE CAP CONSTRUCTION SUPPLY, INC.
and HD SUPPLY INC.

1 *Rojas v. White Cap Construction and HD Supply, et al.*
2 Case No. CGC-08-477141

3
4 **PROOF OF SERVICE BY MAIL**

5 I am over the age of 18 and not a party to the within action. I am employed in the County
6 of San Francisco, State of California by Thelen Reid Brown Raysman & Steiner LLP. My
7 business address is 101 Second Street, Suite 1800, San Francisco, California 94105.

8 On August 13, 2008, I served the following entitled document:

9
10 **ANSWER OF DEFENDANTS WHITE CAP CONSTRUCTION SUPPLY, INC.
11 AND HD SUPPLY INC. TO PLAINTIFF'S COMPLAINT FOR DAMAGES**

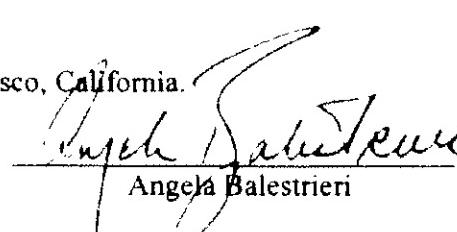
12 by placing a true and correct copy thereof in sealed envelopes addressed as follows:

13
14 Michael Hoffmann, Esq
Hoffmann Employment Lawyers, LLP
100 Pine Street, Suite 1550
San Francisco, CA 94111

15 I am readily familiar with the firm's business practice for collection and processing of
16 correspondence for mailing with the United States Postal Service. On this day, I placed for
17 collection and processing the above documents to be deposited with the United States Postal
18 Service in the ordinary course of business. And in the ordinary course of the firm's business, such
19 correspondence is deposited with the United States Postal Service the same day that it is collected.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct.

22 Executed on August 13, 2008, at San Francisco, California.

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Angela Balestrieri